



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/167211

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 13, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on August 12, 2015, at Milwaukee, Wisconsin. The record was held open to see if Petitioner could obtain a letter from his child's mother or from the child's school. Nothing was received by the Division of Hearings and Appeals.

The issue for determination is whether the agency correctly determined that Petitioner was overpaid child care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Shelia Easley

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was sent a child care overpayment notice, dated June 29, 2015. It indicated that Petitioner had been overissued child care benefits in the amount of \$854.76 during the period from June 1, 2014 to May 31, 2105 (claim # [REDACTED]).
3. Petitioner received the child care benefits involved here. The child involved is a school aged child and only needed after school care.
4. Petitioner and the mother of his child share custody of their child and alternate weeks of placement per a court ordered Order for Custody and Placement.
5. The agency alleged this overpayment as a result of agency error – the authorization was enrollment based rather than attendance based. Thus the provider could bill the child care program even during weeks when Petitioner did not have the child.
6. At hearing, Petitioner allowed that he had used the child care during what were to be weeks of placement with the mother as she is disabled and cannot drive so he has the child during the week and the mother has the child on weekends.
7. Agency case notes do indicate that Petitioner provided a lease in February 2014 that showed the child in named as a resident on Petitioner's lease.

### DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *Wis. Admin. Code, § DCF 101.23*. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment or whose error caused the overpayment. *Wis. Admin. Code, § DCF 101.23(1)(g)*. All overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual), §2.3.1*.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Petitioner testified that the mother of his child is disabled and cannot drive so they have agreed to a modification of the Order for Custody and Placement that results in Petitioner having the child during the week and the mother of weekends. Thus Petitioner notes that he has had to use the child care. Further, he contends that he should have been told that there was a problem earlier so this overpayment could have been avoided.

Missing here is evidence demonstrating that the child involved was living with Petitioner during the week and is only with the mother on weekends. The Court order does not demonstrate that. It has not been legally changed through the courts. While the lease (referred to in case notes but not itself in the record) apparently contains the name of Petitioner's son it is not sufficient to demonstrate that the child is with him 5 days per week every week of the school year. I also note that this overpayment does include some periods of time when school would not likely have been in session. Petitioner did not think he could get some documentation from the mother as she feared it might mean that her FoodShare would be cut. Nothing has been submitted from the school that shows that Petitioner has all of the responsibilities for the child. Bluntly, it makes no sense that tax payer dollars should be spent to include a child on the mother's FoodShare case when Petitioner is claiming the child for weekly child care benefits. Without some evidence demonstrating the court order has changed I am sustaining the overpayment.

### **CONCLUSIONS OF LAW**

That the available evidence demonstrates that the agency correctly seeks recovery of an overpayment of child care as alleged.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

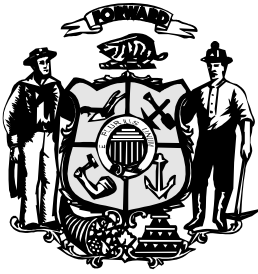
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of November, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 11, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud